

Schnellrecherche der SFH-Länderanalyse vom 10. Juni 2016 zu China: Legale Ausreise nach Polizeigewahrsam, Polizei, Korruption, Telefon- abhörungen

Fragen an die SFH-Länderanalyse:

- Gibt es Berichte, dass Personen, die sich einmal in polizeilichem Gewahrsam befunden haben, legal ausreisen können?
- Gibt es Berichte über Korruption bei der Polizei? Gibt es Berichte, dass sich Polizistinnen und Polizisten bestechen lassen mit dem Ziel, eine Strafverfolgung zu vermeiden?
- Gibt es Berichte, dass Polizisten Personen, die sie willkürlich festhielten und misshandelten, damit drohten, Nacktfotos von diesen im Internet zu veröffentlichen?
- Gibt es Berichte, dass die chinesischen Behörden Telefongespräche abhören?
- Gibt es Informationen, dass Personen, die sich anlässlich einer Volkszählung «registrieren» lassen, bei der Einwohnerkontrolle anonym bleiben?

Die Informationen beruhen auf einer zeitlich begrenzten Recherche (Schnellrecherche) in öffentlich zugänglichen Dokumenten, die uns derzeit zur Verfügung stehen.

1 Gibt es Berichte, dass Personen, die sich einmal in polizeilichem Gewahrsam befunden haben, legal ausreisen können?

Kontrolle der Reisedokumente bei Aus- und Einreise durch Grenzkontrollbehörden. Das *Exit and Entry Administration Law of the People's Republic of China* hält in Artikel 11 fest, dass chinesische Staatsbürgerinnen und -bürger bei Aus- beziehungsweise Einreise ihre Aus- beziehungsweise Einreisepapiere den Grenzkontrollbehörden vorzeigen und die vorgeschriebenen Formalitäten erledigen müssen. Nach Kontrolle und Bewilligung durch die Behörden können sie ein- beziehungsweise ausreisen. Artikel 12 hält fest, aus welchen Gründen die Ausreise verwehrt wird. So dürfen unter anderem Personen, die zu Strafen verurteilt wurden oder in Strafsachen verdächtigt oder angeklagt werden, nicht ausreisen. Auch Personen, die in noch laufende Zivilprozesse involviert sind, dürfen vor dem Gerichtsentscheid das Land nicht verlassen.

Schriftliche Mitteilung von Gericht benötigt, um Ausreise zu verhindern. Das *Immigration and Refugee Board of Canada* (IRB) hat im März 2014 einen Bericht zu Ausreisekontrollen und Sicherheitsmassnahmen an Flughäfen verfasst. Darin zitiert wird – kurz zusammengefasst – die folgende offizielle Richtlinie vom Dezember 2012 (*The Interpretation of the Supreme People's Court Concerning the Implementation of the Criminal Procedure Law*): Soll ein chinesischer Staatsbürger oder eine chinesische Staatsbürgerin davon abgehalten werden, das Land zu verlassen, muss der

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Volksgerichtshof, der sich dem Fall annimmt, dies dem Obersten Volksgerichtshof berichten. Letzterer erlässt dann eine entsprechende schriftliche Mitteilung. Das zuständige Organ für öffentliche Sicherheit wird informiert und kümmert sich um die Kontrollformalitäten. In Notsituationen darf die Grenzbehörde, wenn nötig, eine Person von der Ausreise abhalten, bevor die Formalitäten erledigt sind.

Undurchsichtiges Vorgehen, Ausreise von Dissidenten. Gemäss der im IRB-Bericht vom März 2014 zitierten *Laogai Research Foundation*, welche zu Menschenrechtsverletzungen in China recherchiert und publiziert, ist es aufgrund der chinesischen Geheimhaltungsgesetzgebung extrem schwierig, wahrheitsgetreue Informationen zu sensiblen Themen zu erhalten. Dazu gehören auch Informationen zur Reisefreiheit von chinesischen Staatsangehörigen und zu den Verfahren, anhand derer diese Freiheit eingeschränkt wird. Gemäss der gleichen Quelle ist so dem Dissidenten Liao Yiwu wahrscheinlich aufgrund eines Irrtums der Behörden die Ausreise erlaubt worden.

Laut verschiedenen im IRB-Bericht zitierten Quellen hat das Sicherheitspersonal an Flughäfen Zugriff auf die Online-Datenbank des chinesischen Büros für öffentliche Sicherheit (*Policenet* oder *The Golden Shield* genannt). In dieser sind Bürgerinnen und Bürger registriert, welche wegen Verbrechen verurteilt worden sind oder von den Behörden gesucht werden.

The People's Republic of China, Exit and Entry Administration Law of the People's Republic of China, Updated am 10. September 2014:

«Article 11 Chinese citizens who exit or enter China shall submit their exit/entry documents such as passports or other travel documents to the exit/entry border inspection authorities for examination, go through the prescribed formalities, and may exit or enter upon examination and approval.

For ports that meet relevant conditions, exit/entry border inspection authorities shall provide convenience such as special lanes for the exit and entry of Chinese citizens.

Article 12 Under any of the following circumstances, Chinese citizens are not allowed to exit China:

- (1) Hold no valid exit/entry documents, or refuse or evade border inspection;**
- (2) Are sentenced to criminal punishments, the execution of which have not been completed, or are suspects or defendants in criminal cases;**
- (3) Are involved in unsettled civil cases and not allowed to exit China upon decision of the people's courts;**
- (4) Are subject to criminal punishment for impairing border administration, or are repatriated by other countries or regions due to illegal exit from China, illegal residence or illegal employment, and the No-Exit-from-China period has not expired;**
- (5) May endanger national security or interests, and are not allowed to exit China upon decision by competent departments under the State Council; or**

(6) *Other circumstances in which exit from China is not allowed in accordance with laws or administrative regulations.*» Quelle: The People's Republic of China, The State Council, LAWS REGULATIONS, Exit and Entry Administration Law of the People's Republic of China, Updated 10. September 2014:
http://english.gov.cn/archive/laws_regulations/2014/09/22/content_281474988553532.htm.

IRB, 6. März 2014:

*«The Interpretation of the Supreme People's Court Concerning the Implementation of the Criminal Procedure Law, published in December 2012 and unofficially translated into English by the US-Asia Law Institute at the New York University School of Law, provides the following **guidelines for the adjudication of criminal cases involving foreign jurisdictional issues**: [translation]*

If a foreigner or a Chinese citizen must be prevented from leaving China at a border control station, the people's court accepting the case shall report up the hierarchy to the High People's Court, and a written notification of preventing person from departing through entry-exit port shall be issued by the Highest People's Court, and work with the public security organ of the corresponding level for handle control formalities. If the control port is not within the same province, autonomous region, or municipality directly under the central government, the public security organ in the relevant province, autonomous region, or municipality directly under the central government shall be contacted for the handle control formalities. Under emergency situations, if necessary, may first have the border control prevent departure and complete control formalities later. (China 20 Dec. 2012, Art. 404) (...)

*The Laogai Research Foundation representative noted that, in addition to monitoring and restricting the movements of political dissidents, the authorities also "often monitor and harass" their family members, including by denying them permission to travel abroad (26 Feb. 2014). The representative noted that his organization has "no evidence that the Chinese authorities routinely target the families of individuals charged with committing non-political crimes" (Laogai Research Foundation 26 Feb. 2014). He also stated **that [i]t should be noted that Chinese secrecy laws make it extraordinarily difficult to obtain accurate information on politically sensitive subjects, such as restrictions on the freedom of travel ... As such, it is often impossible to obtain official records regarding surveillance techniques and capabilities, criminal investigations in politically sensitive cases, the treatment of certain ethnic minority groups, and procedures involved in restricting the ability of an individual to travel. Moreover, despite recently announced intent to clarify the content of state secrets laws, such regulations remain vague and subject to the discretion of Communist Party officials. (ibid.) (...)***

*According to the representative of the Laogai Research Foundation, in 2011, a dissident and former Laogai Research Foundation employee, Liao Yiwu, was "allowed to leave China, likely **due to a clerical error**" (23 Feb. 2014). The New York Times reports that Liao had been denied permission to exit the country 17 times, before unidentified friends helped him escape the country (12 July 2011).*

3. Information Sharing by Public Security Officials

In 10 February 2014 correspondence with the Research Directorate, the Executive Director of the Dui Hua Foundation affirmed that **airport security officials have access to the Public Security Bureau of China's online database of citizens who have been convicted of crimes or are wanted by the authorities [also known as Policenet or the Golden Shield]**. Similarly, the representative of the Laogai Research Foundation stated that reports on "experiences of activists who have been detained while trying to board an international flight provide **clear evidence that airport officials are connected to Policenet**" (26 Feb. 2014). A colleague of Cao Shunli, who was also prevented from travelling to Geneva for the human rights training in September 2013, later publicized her own experience at the airport in Guangdong (HRIC 11 Oct. 2013). According to the Laogai Research Foundation, the colleague indicates that when her passport was swiped by airport authorities, scanning equipment immediately made noises alerting airport officials that she was wanted by police. She was subsequently detained in the Guangdong Baiyun Airport and told that Shanghai police would not let her leave. She was then transported from Guangdong to Shanghai for detention and questioning. This woman's experience provides concrete evidence of airport officials coordinating with police departments in tracking and detaining a political dissident. (26 Feb. 2014)» Quelle: IRB – Immigration and Refugee Board of Canada, China: Exit controls and security measures at airports for Chinese citizens travelling overseas, including procedures at check points and the use of computerized identity verification; sharing of information with officials at airports (2011-February 2014) [CHN104761.E], 6. März 2014: www.ecoi.net/local_link/287615/421570_de.html.

2 Gibt es Berichte über Korruption bei der Polizei, einschliesslich Bestechung, um eine Strafverfolgung zu vermeiden?

Korruption und Bestechung weitverbreitet. Gemäss verschiedenen Quellen ist Korruption in China weitverbreitet, insbesondere auf der lokalen Ebene, und beeinflusst in vielen Fällen Gerichtsentscheide (USDOS, 13. April 2016; *Bertelsmann Stiftung* (BTI), 2016). Gemäss USDOS hat die für die Kommunistische Partei Chinas zuständige Kommission für Korruptionsbekämpfung im Jahr 2014 mehr als 2,72 Millionen Hinweise auf Korruption verzeichnet, 226'000 Fälle in Zusammenhang mit Korruption untersucht und gegen 232'000 Beamte Disziplinarstrafen verhängt. Dies entspricht einem Anstieg von 27 Prozent im Vergleich zum Vorjahr. Im April 2015 berichtete die Oberstaatsanwaltschaft, dass Staatsanwälte landesweit im ersten Quartal des Jahres 2015 in mehr als 7556 Fällen von Bestechung und Veruntreuung ermittelten. *Reuters* berichtete am 18. Dezember 2014 beispielsweise vom Fall eines Polizeichefs, der wegen Machtmissbrauch und Annahme von Bestechungsgeldern verhaftet wurde.

Grosse Macht der Polizei innerhalb des Justizsystems. Die Aufsicht der Oberstaatsanwaltschaft über die Polizei ist laut USDOS (13. April 2016) begrenzt. Auch laut *Amnesty International* (11. November 2015) verfügt die Polizei innerhalb des Justizsystems über zu viel Macht. *Human Rights Watch* schreibt in einem Bericht vom November 2015 gar, dass die Polizei deutlich mehr Macht innehat als die Richter- und Staatsanwaltschaft.

USDOS, 13. April 2016:

«The Ministry of Public Security coordinates the civilian police force, which is organized into specialized police agencies and local, county, and provincial jurisdictions. **Procuratorate oversight of the police was limited. Corruption at the local level was widespread.** Police and urban management officials engaged in extrajudicial detention, extortion, and assault. (...)

Corruption often influenced court decisions, since safeguards against judicial corruption were vague and poorly enforced. **Local governments appointed and paid local court judges** and, as a result, often exerted influence over the rulings of those judges.(...)

In January the Central Commission for Discipline Inspection, the CCP's leading body for countering corruption among members, reported that in 2014 it had received more than 2.72 million allegations of corruption, investigated 226,000 corruption-related cases, and disciplined 232,000 officials, 27 percent more than in 2013. Among those investigated, 68 senior officials at the vice-ministerial level or above in the CCP, government, and state-owned enterprises were eventually removed from their posts. **In addition, 71,748 officials were punished for violating one or more of the "eight rules" that serve as the mandate for the anticorruption campaign, 35 percent more than 2013.** In 2014 a total of 500 officials who had fled abroad with illicit funds, reportedly involving three billion RMB (\$462 million), were apprehended. **In April the Supreme People's Procuratorate reported that, in the first quarter, prosecutors nationwide had investigated more than 9,636 individuals and 7,556 cases for bribery and embezzlement.** There were 6,649 "major cases"--bribery cases exceeding 50,000 RMB (\$7,700) and embezzlement cases exceeding 100,000 RMB (\$15,400).» Quelle: US Department of State: Country Report on Human Rights Practices 2015 – China, 13. April 2016, S. 10, 14, 47: www.ecoi.net/local_link/322465/461942_de.html.

BTI, 2016:

«**Rampant corruption, a semi-functional legal system, and a lack of sustainability in economic development constitute other serious problems.** (...)

«Although the judiciary is institutionally differentiated, there exists a considerable lack of judicial independence. Despite the leadership's repeated vocal commitment to the rule of law, China's legal system remains tightly under the control of the CCP and interference with the work of the judiciary still occurs frequently. **Particularly within the lower level courts, judged are very susceptible to corruption.**» Quelle: Bertelsmann Stiftung: BTI 2016; China Country Report, 2016, S. 4, 8: http://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_China.pdf.

Reuters, 18. Dezember 2014:

«The former police chief of a major city in northern China has been charged with corruption, state media said on Thursday, after he was sacked for allowing his drunk son to be set free, despite having attacked a policeman. Li Yali was the top police of-

ficer in Taiyuan, which lies about 500 km (300 miles) southwest of Beijing, until last year, when footage of his son's drunken violence went viral on the Internet. His son, Li Zhengyuan, was stopped on suspicion of driving under the influence in October 2012 and was found to be drunk at the wheel. He attacked one of the police officers, who then walked him home instead of arresting him, state media said.

A Communist Party investigation found that Li Yali had abused his power while handling his son's case, and he has now been arrested and charged with accepting bribes, the official Xinhua news agency reported. It gave no other details of the charges Li faces and it was not possible to reach him for comment.» Quelle: Reuters, China Police Chief Who Released Drunk Son Charged With Corruption, 18. Dezember 2014:

www.ibtimes.com/china-police-chief-who-released-drunk-son-charged-corruption-1762472.

AI, 11. November 2015:

«**A fundamental problem remains in that the public security, China's police authority, still wields too much power within the judicial system and that as a result few perpetrators of torture are held to account.**» Quelle: Amnesty International: No end in sight – Torture and forced confessions in China [ASA 17/2730/2015], 11. November 2015, S. 5:

www.ecoi.net/file_upload/1226_1464072632_asa1727302015english.pdf.

HRW, November 2015:

«**Because the criminal justice system continues to value confessions above all other forms of evidence, and because police wield considerably greater power than the judiciary and the procuratorate, there are few ways for suspects to avoid or find redress for torture at the hands of the police.**» Quelle: Human Rights Watch: Human Rights Watch Submission to the United Nations Committee against Torture; During its Consideration of the Fifth Periodic Report of the People's Republic of China, November 2015, S. 1:

www.ecoi.net/file_upload/1930_1448545855_int-cat-css-chn-22121-e.pdf.

3 Gibt es Berichte, dass Polizisten Personen, die sie willkürlich festhielten und misshandelten, damit drohten, Nacktfotos von diesen im Internet zu veröffentlichen?

Ungeachtet der Gesetzgebung sind Folter und unmenschliche oder erniedrigende Behandlung von Festgehaltenen durch die Polizei weiterhin weitverbreitet. Verschiedene Quellen (USDOS, 13. April 2016; *Amnesty International*, 28. Oktober 2015; *Human Rights Watch*, Mai 2015) berichten, dass Personen, denen die Freiheit entzogen wurde, immer wieder von chinesischen Sicherheitsbehörden gefoltert, unmenschlich oder erniedrigend behandelt sowie auf andere Weise physisch und psychisch misshandelt werden, obwohl die Gesetzgebung solche Vorgehensweisen verbietet. Laut USDOS sind vor allem politische und religiöse Dissidenten betroffen.

Amnesty International, 28. Oktober 2015:

«Torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) have long been prevalent in all situations where authorities deprive individuals of their liberty in China.» Quelle: Amnesty International: China; Submission to the United Nations Committee Against Torture; 56th Session, 9 November - 9 December 2015 [ASA 17/2725/2015], 28. Oktober 2015, S. 5:
www.ecoi.net/file_upload/1930_1448456661_int-cat-css-chn-22118-e.pdf.

USDOS, 13. April 2016:

«The law prohibits the physical abuse and mistreatment of detainees and forbids prison guards from coercing confessions, insulting prisoners' dignity, and beating or encouraging others to beat prisoners. Amendments to the criminal procedure law exclude evidence, including confessions obtained through illegal means, in certain categories of criminal cases. Numerous former prisoners and detainees reported they were beaten, subjected to electric shock, forced to sit on stools for hours on end, deprived of sleep, and otherwise subjected to physical and psychological abuse.

Although ordinary prisoners were abused, prison authorities reportedly singled out political and religious dissidents for particularly harsh treatment. In some instances close relatives of dissidents also were singled out for abuse.

The problem of torture was systemic, according to a UN Committee against Torture (UNCAT) report released in December that detailed the extent to which torture was embedded in the criminal justice system. While UNCAT acknowledged some improvements, such as the broader use of surveillance cameras during interrogations, the report stated that torture was "entrenched". (...)

A May Human Rights Watch report found continued widespread use of degrading treatment and torture by law enforcement authorities.» Quelle: US Department of State: Country Report on Human Rights Practices 2015 – China, 13. April 2016, S. 5-6:

www.ecoi.net/local_link/322465/461942_de.html.

4 Gibt es Berichte, dass die chinesischen Behörden Telefongespräche abhören?

Überwachung von Telefongesprächen, Textnachrichten, E-Mails und anderen digitalen Kommunikationsmitteln. Gemäss USDOS (13. April 2016) respektieren Behörden die Privatsphäre von Bürgerinnen und Bürgern häufig nicht. Behörden überwachen Telefongespräche, Textnachrichten, Faxe, E-Mails und andere digitale Kommunikationsmittel. Auch öffnen und zensieren sie inländische und internationale Post. Sicherheitskräfte beobachten Wohnungen und Büros und dringen in sie ein, um Zugang zu Computern, Telefonen und Faxmaschinen zu erhalten. *Freedom House* schreibt in einem Bericht vom Januar 2016, dass die Überwachung von Internet und Mobiltelefonkommunikationen in China weitverbreitet ist. So wurden Text- und Sofortnachrichten schon in Gerichtsdokumenten zitiert. Gemäss einem Artikel

der *Washington Post* vom 29. Januar 2016 ist die Überwachung von privater Kommunikation einschliesslich mit dem Ausland nicht nur üblich, sondern institutionalisiert und weit verbreitet.

Laut verschiedenen Quellen werden insbesondere ehemalige politische Häftlinge und Menschenrechtsaktivistinnen und -aktivisten und deren Familien unter polizeiliche Überwachung gestellt, einschliesslich Telefonüberwachung, Durchsuchungen und andere Formen von Schikane und Bedrohungen (BTI, 2016; *UK Home Office*, Oktober 2015).

USDOS, 13. April 2016:

*«Former prisoners reported that their ability to find employment, travel, obtain residence permits, rent residences, and access social services was severely restricted. **Authorities frequently subjected former political prisoners and their families to police surveillance, telephone wiretaps, searches, and other forms of harassment or threats.** (...)*

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

*While the law states that the “freedom and privacy of correspondence of citizens are protected by law,” **authorities often did not respect the privacy of citizens.** Although the law requires warrants before officers can search premises, officials frequently ignored this requirement. The Public Security Bureau and prosecutors are authorized to issue search warrants on their own authority without judicial review. Cases of forced entry by police officers continued to be reported. **Authorities monitored telephone calls, text messages, faxes, e-mail, instant messaging, and other digital communications intended to remain private. They also opened and censored domestic and international mail. Security services routinely monitored and entered residences and offices to gain access to computers, telephones, and fax machines.**» Quelle: US Department of State: Country Report on Human Rights Practices 2015 – China, 13. April 2016, S. 19-21:
www.ecoi.net/local_link/322465/461942_de.html.*

Freedom House, Januar 2016:

*«**Real-name registration is just one aspect of the pervasive surveillance of internet and mobile phone communications in China. The DPI technology used for censorship can monitor users, and personal text- and instant-message exchanges have been cited in court documents.**» Quelle: Freedom House: The Politburo’s Predicament – Confronting the Limitations of Chinese Communist Party Repression, Januar 2015, S. 22:
https://freedomhouse.org/sites/default/files/resources/FOTN%202015_China%20%28new%29.pdf.*

The Washington Post, 29. Januar 2016:

«Peter Fuhrman is chairman and chief executive of China First Capital. (...)

Within China, government monitoring of private communication is not only common, but it is also explicit, institutionalized and generally quite popular. How much so? Just about every time I get an international phone call on my Chinese mobile phone, I'm pinged within seconds by a text message. It's an automated message from the anti-fraud department of the city of Shenzhen's Public Security Bureau (PSB), China's version of the FBI. This message informs me in polite Chinese that the PSB knows I'm on the phone with someone calling from outside China, and so I should be especially vigilant, because the caller could be part of some scheme to steal my money or otherwise cheat me. The phone number for the anti-fraud hotline is included. International fraud is, as of now, the only criminal activity that China's government uses the mobile network to warn me about.

I do like knowing the Chinese police are on the job, warning and protecting the innocent. But I find it a little unsettling that they know immediately when I get an international call and are eager to inform me that they are keeping tabs. There's also the fact that I get these messages every time my 83-year-old father calls from Florida. Does the Chinese security apparatus know something about him that I don't?

China Mobile is the world's largest mobile phone company, with more than 800 million customers. To generate that automatic anti-fraud text message, international calls routed across the network in all likelihood pass through a server layer controlled and monitored by the PSB; calls from certain countries get flagged, and the text message is dispatched as the call is taking place. This isn't cyber-spying. This is a deep integration.» Quelle: The Washington Post, Government cyber-surveillance is the norm in China – and it's popular, 29. Januar 2016: www.washingtonpost.com/opinions/cyber-surveillance-is-a-way-of-life-in-china/2016/01/29/e4e856dc-c476-11e5-a4aa-f25866ba0dc6_story.html.

BTI, 2016:

«Moreover, the email and phone communications of political activists are monitored, as is allegedly the Chinese version of online telephony company Skype.» Quelle: Bertelsmann Stiftung: BTI 2016; China Country Report, 2016, S. 7: http://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_China.pdf.

UK Home Office, Oktober 2015:

«Family members of political prisoners and human rights defenders, including children, are at risk of arbitrary arrest, detention and harassment (see Family members of perceived political activists). Former political prisoners and human rights defenders and their families are also subjected to police surveillance, telephone tapping, searches and other forms of harassment and threat.» Quelle: UK Home Office: Country Information and Guidance China: Opposition to the Chinese Communist Party, Oktober 2015, S. 6: www.ecoi.net/file_upload/1226_1445928702_china-opposition-to-the-chinese-communist-party.pdf.

5 Gibt es Informationen, dass Personen, die sich anlässlich einer Volkszählung «registrieren» lassen, bei der Einwohnerkontrolle anonym bleiben?

Gemäss der *Congressional-Executive Commission on China*, einer Kommission des US-amerikanischen Kongresses zur Beobachtung der Menschenrechte und der Entwicklung der Rechtsstaatlichkeit in China, werden die Einwohnerinnen und Einwohner während der Volkszählung dort erfasst, wo sie wirklich leben und nicht am Ort ihrer permanenten Wohnsitzregistrierung.

Congressional-Executive Commission on China, 20. September 2006:

«The national census uses a method of enumeration that attempts to record more of the population as present in the locations where they actually are, rather than at the location recorded on their permanent residence registration certificates. Provincial annual statistical yearbooks instead rely on data compiled by the Public Security Bureau (PSB)» Quelle: Congressional-Executive Commission on China: Annual Report 2006, 20. September 2006, Fussnote 94:
www.cecc.gov/publications/annual-reports/2006-annual-report#1682b.